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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,993	08/27/2001	Shirley Pollack	SHP-02003/03	5362

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EXAMINER

JEFFERY, JOHN A

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 08/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/939,993	POLLACK, SHIRLEY
Examiner	Art Unit	
John A. Jeffery	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 5/14/02.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7 and 13-15 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 14 May 2002 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-3, 5-7, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE2637484 in view of Caruso (US3836750). DE2637484 discloses a heated air blowing device comprising an electric heating element and fan powered by batteries. The outermost end of nozzle 1 is made of rubber so that the surface to be heated is not damaged by contact therewith. Also, the rubber nozzle tip is interchangeable. See Abstract and Figure. While the handheld heater is disclosed for thawing frozen vehicle locks, the recited use of the instant invention (i.e., drying a moist region of a person's body) is merely intended use of the apparatus and does not structurally limit the claims. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Also, a recitation with respect to the manner in which a claimed

apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of the apparatus claimed. See *Ex Parte Masham*, 2 USPQ 2d 1647 (1987). The claims differ from the previously cited prior art in calling for means for venting air to the atmosphere if the outermost end of the air outlet is blocked. Providing means for venting air from a handheld dryer if the endmost outlet is blocked is conventional and well known in the art as evidenced by Caruso (US3836750) noting ports 86 which prevent the development of substantial back pressure if the main outlet 84 is blocked. See Fig. 2 and col. 3, lines 39-49. In view of Caruso (US3836750), it would have been obvious to one of ordinary skill in the art to provide auxiliary ports in conjunction with the main outlet of the previously described apparatus so that back pressure is relieved via the additional ports if the main outlet is blocked.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE2637484 in view of Caruso (US3836750) and further in view of Martin (US1660802). The claim differs from the previously cited prior art in calling for a lamp. Providing a lamp in conjunction with a heated air blower is conventional and well known in the art as evidenced by Martin (US1660802) noting lamp 46 in Fig. 2 which illuminates the area to be heated. In view of Martin (US1660802), it would have been obvious to one of ordinary skill in the art to provide a lamp in conjunction with the heated air blower of the previously described apparatus so that the area to be heated is illuminated via a lamp

integrated with the blower, thereby precluding the need for additional lights and electric power sources therefor.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE2637484 in view of Caruso (US3836750) and further in view of Chimera (US5394620). The claim differs from the previously cited prior art in calling for electrical contacts adapted to allow recharging of the battery. Providing contacts on a handheld heated air blower for a rechargeable battery is conventional and well known in the art as evidenced by Chimera (US5394620) noting recharging stand 19 adapted to recharge the batteries in the handheld blower when not in use. In view of Chimera (US5394620), it would have been obvious to one of ordinary skill in the art to provide a recharging means with electrical contacts on the blower of the previously described apparatus so that the batteries could be recharged when not in use, thereby precluding the need to replace the batteries when they are run down.

Response to Arguments

Applicant's arguments filed 5/14/02 have been considered but are not deemed to be persuasive.

DE2637484 is Analogous Art

Applicant argues that DE2637484 is nonanalogous art on the grounds that Applicant's invention is intended to dry a moist region of a person's body and not for deicing vehicle locks. However, the relevant art pertaining to the structure of

Applicant's invention is electrically heated air blowers in general which encompasses a wide variety of intended uses of the blower and is not limited to human body dryers.

As noted in the rejection, the intended use of the apparatus structure does not limit the structure of the claim. Here, DE '484 contains all of the recited structural features except for means for venting air upon outlet blockage.

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." (emphasis added.) *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

Here, the field of endeavor is electrically heated air blowers in general and is not limited to dryers. DE '484 is an electrically heated air blower and is therefore analogous art to which one of ordinary skill in the art would reasonably refer.

Furthermore, with regard to the rubber nozzle of DE '484, while the Abstract does not expressly state its purpose, one of ordinary skill in the art can reasonably infer its

purpose from the reference itself. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). Here, if the nozzle were not a soft material such as rubber, using the blower to heat the door lock would pose a serious risk of scratching the vehicle exterior since the nozzle must be positioned closely adjacent the lock. However, by using a rubber nozzle, the risk of scratching is greatly minimized. While not expressly articulated by the reference, one of ordinary skill in the art, an electrical engineer with at least five years of related experience, would reasonably infer the purpose and advantages of the rubber nozzle in light of the overall teaching of the reference.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, one of ordinary skill in the art, in light of Caruso, would clearly be motivated to use venting means since the reference is in the same field of endeavor as the DE '484 reference--electrically heated air blowers.

Moreover, any electrically heated air blower has an outlet which is subject to blockage and the resulting back pressure increase caused by the blockage. DE 484 has an outlet which could certainly be blocked and subjected to similar backpressure problems as recognized in the art. One of ordinary skill in the art would look to the teachings of Caruso to solve an outlet blockage problem in an electrically heated air blower.

Final Rejection

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this or earlier communications from the examiner should be directed to John A. Jeffery at telephone number (703) 306-4601 or fax (703) 305-

3463. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM EST. The examiner can also be reached on alternate Fridays.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.



JOHN A. JEFFERY
PRIMARY EXAMINER

8/23/02